

**Assembly Constitutional Amendment**

**No. 23**

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**Introduced by Assembly Member Hernandez  
(Coauthors: Assembly Members De Leon, Hall, and Salas)**

May 4, 2009

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Assembly Constitutional Amendment No. 23—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 31 of Article I thereof, relating to public postsecondary education.

LEGISLATIVE COUNSEL’S DIGEST

ACA 23, as introduced, Hernandez. Public postsecondary education: student recruitment and retention.

The California Constitution prohibits the state from discriminating against, or granting preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.

This measure would provide that the above prohibition does not prevent state institutions of higher education, as defined, from implementing student recruitment and selection programs permissible under the Equal Protection Clause of the 14th Amendment of the United States Constitution.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

- 1     *Resolved by the Assembly, the Senate concurring,* That the
- 2     Legislature of the State of California at its 2009–10 Regular
- 3     Session commencing on the first day of December 2008, two-thirds
- 4     of the membership of each house concurring, hereby proposes to

1 the people of the State of California, that the Constitution of the  
2 State be amended as follows:

3 That Section 31 of Article I thereof is amended to read:

4 SEC. 31. (a) The State shall not discriminate against, or grant  
5 preferential treatment to, any individual or group on the basis of  
6 race, sex, color, ethnicity, or national origin in the operation of  
7 public employment, public education, or public contracting.

8 *(b) Notwithstanding subdivision (a), nothing in this section shall*  
9 *prevent State institutions of higher education from implementing*  
10 *student recruitment and selection programs that are permissible*  
11 *under the Equal Protection Clause of the Fourteenth Amendment*  
12 *of the United States Constitution.*

13 ~~(b)~~

14 (c) This section shall apply only to action taken after the  
15 section's effective date.

16 ~~(c)~~

17 (d) Nothing in this section shall be interpreted as prohibiting  
18 bona fide qualifications based on sex which are reasonably  
19 necessary to the normal operation of public employment, public  
20 education, or public contracting.

21 ~~(d)~~

22 (e) Nothing in this section shall be interpreted as invalidating  
23 any court order or consent decree which is in force as of the  
24 effective date of this section.

25 ~~(e)~~

26 (f) Nothing in this section shall be interpreted as prohibiting  
27 action which must be taken to establish or maintain eligibility for  
28 any federal program, where ineligibility would result in a loss of  
29 federal funds to the State.

30 ~~(f)~~

31 (g) (1) For the purposes of this section, "State" shall include,  
32 but not necessarily be limited to, the State itself, any city, county,  
33 city and county, public university system, including the University  
34 of California, community college district, school district, special  
35 district, or any other political subdivision or governmental  
36 instrumentality of or within the State.

37 (2) *For the purposes of this section, "State institutions of higher*  
38 *education" shall mean (A) the California Community Colleges;*  
39 *(B) the California State University, and each campus, branch, and*

1 *function thereof; and (C) each campus, branch, and function of*  
2 *the University of California.*

3 ~~(g)~~

4 *(h)* The remedies available for violations of this section shall  
5 be the same, regardless of the injured party's race, sex, color,  
6 ethnicity, or national origin, as are otherwise available for  
7 violations of then-existing California antidiscrimination law.

8 ~~(h)~~

9 *(i)* This section shall be self-executing. If any part or parts of  
10 this section are found to be in conflict with federal law or the  
11 United States Constitution, the section shall be implemented to  
12 the maximum extent that federal law and the United States  
13 Constitution permit. Any provision held invalid shall be severable  
14 from the remaining portions of this section.